

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>CAROLYN BARNES, et. al.,</b>	§	
	§	
<b>v.</b>	§	<b>A-15-CV-298-RP</b>
	§	
<b>UNITED STATES OF AMERICA</b>	§	

**ORDER**

The Court notes that Plaintiff Carolyn Barnes has not filed any Proof of Service with the Court regarding Defendants Lacey Loftin and Harold Poppa.<sup>1</sup> 28 U.S.C. § 1448 states that,

In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.

Pursuant to FED. R. CIV. P. 4(l), “[u]nless service is waived, proof of service must be made to the court.”<sup>2</sup> Nothing on the docket sheet suggests that Defendants Loftin and Poppa have waived their right to proper service. Further, under FED. R. CIV. P. 4(m), Barnes has 120 days after removal of the complaint to serve the Defendants. As this case was removed on April 17, 2015, Barnes must serve Poppa and Loftin by August 17, 2015. “If a defendant is not served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant” unless the plaintiff is able to show good cause for the failure. FED. R. CIV. P. 4(m).

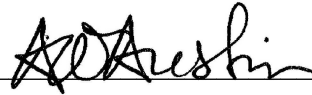
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<sup>1</sup>The state court record reflects that Barnes attempted service on Loftin via United States Certified Mail, addressed to Loftin at a US Census Bureau address in Washington, D.C. Dkt. No. 5-3 at 19-20. It appears that the package was returned with a note stating, “This is personal mail—not office business. The Census Bureau does not accept delivery.” *Id.* at 19.

<sup>2</sup> This requirement is also reflected in the Western District of Texas’s Pro Se Manual, which outlines the process for pursuing a civil case in this district, and in particular addresses serving the summons and complaint. The Manual is located on the Court’s website, and may be found at <http://www.txwd.uscourts.gov/ProSe/Documents/prosemanual.pdf>.

28 U.S.C. § 1447(a) states that “in any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.” Therefore, and in the interest of a speedy resolution of these disputes, **IT IS HEREBY ORDERED** that Barnes **IMMEDIATELY SERVE** Defendants Loftin and Poppa. Barnes is hereby **WARNED** that if she fails to serve Defendants Loftin and Poppa by **August 17, 2015**, and fails to show good cause for such failure, this Court will recommend that the District Court **DISMISS** the above-styled action against Defendants Loftin and Poppa for failure to timely serve.

SIGNED this 15<sup>th</sup> day of June, 2015.

A handwritten signature in black ink, appearing to read "A. Austin", is written over a horizontal line.

ANDREW W. AUSTIN  
UNITED STATES MAGISTRATE JUDGE